IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Con.Case(C).No. 14 of 2007(S)

ORDER IN WPC.27538/2005 Dated 23/12/2005

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PETITIONER/PETITIONER IN THE WRIT PETITION:

DR.A.K.B. SADHBHAVANA MISSION TRUST,
SARADHA HEALTH CENTRE,KOYILANDY REPRESENTED BY ITS MANAGER DR.SANU JOHN KOVOOR, AGED 33 YEARS,
S/O. K.A. ELIAS.

BY ADV. SRI.BABU KARUKAPADATH
ADV. SMT.VAHEEDA BABU

RESPONDENT/1ST RESPONDENT IN THE WRIT PETITION:

DR. JANAKIKUTTY, AGED ABOUT 51 YEARS
(FATHER'S NAME NOT KNOWN TO THE PETITIONER),
SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

BY SPL. GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR.

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN,J.

Cont. Case (C). NO. 14 OF 2007 S

Dated this the 9th July, 2007

JUDGMENT

H.L.DATTU, C.J.

Petitioner in W.P.(C) No.27538 of 2005 is the complainant in this contempt petition. It is the grievance of the complainant that the respondent has disobeyed the interim directions issued by this Court on 25.10.2005 and 23.12.2005. By those interim orders, this Court had directed the respondent herein (second respondent in the Writ Petition) to furnish a draft agreement to the petitioner, but while passing those orders this Court has not fixed any time.

2. Since the draft agreement as directed by this Court was not furnished by the second respondent in the Writ Petition, the petitioner had gone before the learned single Judge, inter alia contending that the second respondent has disobeyed, deliberately and wilfully the interim orders and directions issued by this Court on 25.10.2005 and 23.12.2005.

3. The Court after entertaining the contempt petition had issued notice to the respondent.

4. The respondent has filed a counter affidavit. In that, it is stated that since no time limit had been fixed by the Court while passing the interim orders for furnishing draft agreement to the petitioner, the respondent has not committed any contempt as such. The Court has not accepted the contention of the respondent. That is how, the Court has

passed an order on 26.2.2007, prima facie coming to the conclusion that the respondent in the contempt petition has disobeyed the interim directions issued by this Court.

5. Immediately thereafter, the respondent has filed a review petition, R.P.No.455 of 2007, before the learned single Judge. In the said Review Petition, it was brought to the notice of the learned Judge that after obtaining appropriate directions from the State Government, the contemnor has furnished the draft agreement to the petitioner. Therefore, she has requested the learned single Judge to review the order passed on 26.2.2007.

6. Learned Judge has rejected the Review Petition with certain observations. The order passed is as under:

> "This is a Review Petition, seeking review of an order passed by this Court, referring the contempt application to the Division Bench for further proceedings. No rule has been brought to the notice of this Court, which will enable this Court to pass further orders in a matter, which has already been referred to the Division Bench. But, the learned counsel for the review petitioner relies on Article 215 of the Constitution of India, to sustain this petition. I think, since I have already referred the matter to the Division Bench and it is pending before the Division Bench for consideration, it is not proper for this court to recall or modify that order. Further, the review petitioner can place all her contentions before the Division Bench. Accordingly, this R.P is dismissed as not maintainable."

7.Learned Government Pleader appearing for the contemnor would submit that though there was some delay in furnishing the draft agreement as directed by this Court on 25.10.2005 and 23.12.2005, the same has

been done on 8.2.2007 after obtaining appropriate orders and directions from the State Government. Therefore, the learned counsel would submit that the contemnor has not either deliberately or wilfully disobeyed the directions issued by this Court.

8. Learned counsel appearing for the complainant would submit that it is only after filing of the contempt petition and after disposal of the Writ Petition, the respondent has circulated the draft agreement.

9. At this stage what we are expected is only to find out whether the respondent has wilfully and deliberately disobeyed the interim orders and directions issued by this Court.

10. This Court while passing the interim orders had directed the contemnor to circulate the draft agreement to the petitioner. While doing so, the Court had not fixed any time. The contemnor, being of the opinion that such a draft agreement could be circulated only after obtaining appropriate permission from the State Government, though belatedly, has circulated the said draft agreement. The contemnor had filed a review petition against the order passed by the learned single Judge on 26.2.2007 and it was brought to the notice of the Court that on 8.2.2007 the draft agreement was circulated to the complainant.

11. The contempt proceedings are quasi criminal proceedings. This Court should be fully satisfied that the contemnor has wilfully and deliberately disobeyed the orders and directions issued by this Court.

Without coming to the aforesaid conclusion, this Court is not expected to frame any charges against the contemnor. Secondly, this Court is not expected to be too sensitive in a matter of this nature.

12. The one and the only direction that was issued by this Court in the interim orders issued was to furnish a draft agreement to the petitioner. Though there is some delay and that delay has been explained by the contemnor. Now that the draft agreement is was circulated to the petitioner on 8.2.2007, may be, after disposal of the Writ Petition, it cannot be contended that the contemnor has deliberately and wilfully disobeyed the orders and directions issued by this Court.

13. In our view, having gone through the interim orders passed by this Court and also the order passed on 26.2.2007, we cannot hold that the contemnor has deliberately and wilfully disobeyed the orders and directions issued by this Court. Therefore, the contempt proceedings need not be proceeded further. Accordingly, we drop the contempt proceedings.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.